

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 3/3/2008	Department ID Number: CA 08-03

## CITY OF HUNTINGTON BEACH REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS

**SUBMITTED BY:** JENNIFER MCGRATH CITY ATTORNEY

**PREPARED BY:** JENNIFER MCGRATH CITY ATTORNEY

**SUBJECT:** Approve Amendments No. 1 to Professional Contracts Between the City of Huntington Beach and Liebert Cassidy Whitmore for Legal Services and Norman A. Traub Associates for Investigation Services

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)
--

**Statement of Issue:** Whether to approve Amendment No. 1 to Professional Contracts Between the City of Huntington Beach and Liebert Cassidy Whitmore for Legal Services in connection to personnel and labor law, employment discrimination, wrongful termination, retirement law, employee discipline, employee grievances, "meet and confer" labor negotiations services pursuant to the Meyers-Milias-Brown Act, and related matters, and Norman A. Traub Associates for Investigation Services for confidential personnel investigations.

**Funding Source:** \$100,000 is appropriated in Human Resources, Liability Insurance 10030502.72525 for Liebert Cassidy Whitmore. \$100,000 is appropriated in Police Department, Jail Fund 31070601.69380 for Norman A. Traub Associates.

**Recommended Action: Motion to:**

1. Approve Amendment No. 1 to Professional Contract Between the City of Huntington Beach and Liebert Cassidy Whitmore for Legal Service; and authorize the Mayor and City Clerk to execute the contract.
2. Approve Amendment No. 1 to Professional Services Contract Between the City of Huntington Beach and Norman A. Traub Associates for Investigation Services; and authorize the Mayor and City Clerk to execute the contract.

**Alternative Action(s):**

Do not approve the Amendment No. 1 to Professional Contract Between the City of Huntington Beach and Liebert Cassidy Whitmore for Legal Service.

Do not approve the Amendment No. 1 to Professional Contract Between the City of Huntington Beach and Norman A. Traub Associates for Investigation Services.

E-8

## REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 3/3/2008

DEPARTMENT ID NUMBER: 08-03

**Analysis:** The City Attorney hires special counsel to represent the City in cases where special expertise is required or there is a conflict of interest. These firms are hired after a "request for proposals" procedure has been conducted. These contracts are not brought to the City Council since they are for less than \$100,000, and pursuant to the City Code, these contracts do not need Council approval.

The existing legal and investigation services being performed by Liebert Cassidy Whitmore and Norman A. Traub Associations, respectfully, will exceed \$100,000 in both legal and investigation services. Consequently, amended agreements are now being brought to the City Council for approval.

**Strategic Plan Goal:** Provide quality public services with the highest professional standards to meet community expectations and needs, assuring that the city is sufficiently staffed and equipped overall.

**Environmental Status:** Not Applicable.

### **Attachment(s):**

City Clerk's Page Number	No.	Description
3	1.	Amendment No. 1 to Professional Contract Between the City of Huntington Beach and Liebert Cassidy Whitmore for Legal Services
12	2.	Professional Services Contract Between the City of Huntington Beach and Liebert Cassidy Whitmore for Legal Services
43	3.	Amendment No. 1 to Professional Contract Between the City of Huntington Beach and Norman A. Traub Associates for Investigation Services
53	4.	Professional Contract Between the City of Huntington Beach and Norman A. Traub Associates for Investigation Services

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# ATTACHMENT #1

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AMENDMENT NO. 1 TO PROFESSIONAL SERVICES CONTRACT  
BETWEEN THE CITY OF HUNTINGTON BEACH AND  
LIEBERT CASSIDY WHITMORE FOR LEGAL SERVICES

THIS AMENDMENT NO. 1 is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY, and LIEBERT CASSIDY WHITMORE, a California professional corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY and CONSULTANT are parties to that certain agreement, dated May 22, 2006, entitled "Professional Services Contract Between the City of Huntington Beach and Liebert Cassidy Whitmore for Legal Services which agreement shall hereinafter be referred to as the "Original Agreement," and

Since its execution, CITY and CONSULTANT wish to amend the Original Agreement to reflect additional compensation to be paid to CONSULTANT,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. ADDITIONAL COMPENSATION

Section 4 of the Original Agreement, entitled "Compensation," is hereby amended to read as follows:

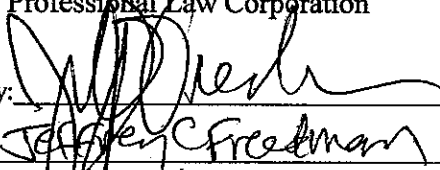
4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT on a time and materials basis at the rates specified in **Exhibit "A"** which is attached hereto and incorporated by reference into this Agreement, an additional fee not to exceed \$100,000, including all costs and expenses. This additional sum shall be added to the original sum of \$100,000, for a new total contract amount of Two Hundred Thousand Dollars (\$200,000.00).

2. REAFFIRMATION


Except as specifically modified herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

CONSULTANT,  
LIEBERT CASSIDY WHITMORE  
A Professional Law Corporation

2/13/08 By:   
Jeffrey C. Freedman  
print name

ITS: (circle one) Chairman/President/Vice President

AND

By:   
Richard M. Krenser  
print name

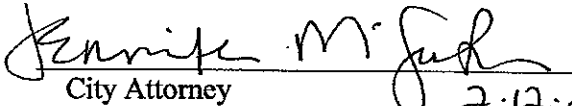
ITS: (circle one) Secretary/Chief Financial Officer/Asst.  
Secretary - Treasurer

CITY OF HUNTINGTON BEACH, a  
municipal corporation of the State of  
California

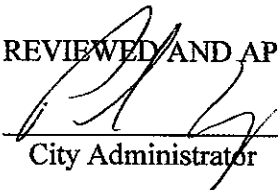
\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

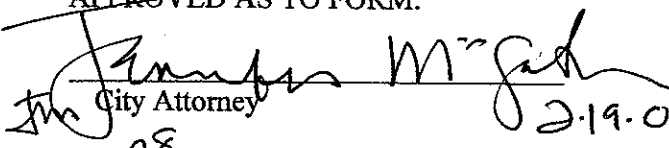
INITIATED AND APPROVED:

  
City Attorney 2-12-08

REVIEWED AND APPROVED:

  
City Administrator

APPROVED AS TO FORM:

  
City Attorney 2-12-08 2-19-08

## EXHIBIT "A"

### Payment Schedule (Hourly Payment)

#### A. Hourly Rate

CONSULTANT'S fees for such services shall be based upon the following hourly rate and cost schedule:

Brian Walter	\$260
Richard Kreisler	\$260
Scott Tiedemann	\$260
Bruce Barsook	\$260
Geoff Sheldon	\$210
Steve Berliner	\$210
Jill Babington	\$190
Laura Kalty	\$190
Connie Chuang	\$160

Other Partners and Associates, at comparable rates to be established at start of services.

The above rates may be adjusted upwards upon the annual anniversary of the execution of this Agreement, in an amount not more than the fees the CONSULTANT offers its most favored clients, or 5%, whichever is less.

#### B. Travel

1. Charges for time during travel are reimbursable at the attorney's hourly rate for the time it takes to travel from the office to the client and back, or the time it takes from the attorney's residence to the client and back, whichever is less.
2. Automobile expenses are limited to the IRS standard business mileage rate, currently \$0.445/mile.

#### C. Billing

1. CONSULTANT shall submit to CITY an invoice for each monthly payment due. Such invoice shall:
  - A) Reference this Agreement;
  - B) Describe the services performed;
  - C) Show the total amount of the payment due;
  - D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
  - E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval, and at the option of CITY, the Agreement may be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

2. All billing shall be done monthly in one-tenth-hour (0.10) increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.

Minimum billing charges are unacceptable. CONSULTANT shall only charge for actual time spent. For example, minimum of 0.2 hours for phone calls or 0.4 hours for letters is unreasonable unless that is an accurate measure of time spent.

3. A separate billing name and account shall be given to each case or matter assigned.
4. Each case or matter's monthly bill should include a life-to-date total. That total should provide, at a glance, the total fees and costs incurred to date for the case or matter.
5. No charge shall be made for email, telephone, cellular phone, ordinary copying from in-house copiers, and postage. All other charges for costs are billable at actual cost. A copy of all service bills/costs should accompany the billing for each single item that exceeds Seventy-Five Dollars (\$75.00). The fee for the sending or receiving of facsimiles shall not exceed Fifty Cents (\$0.50) per page. Extraordinary photocopier costs should be no more than the actual cost of duplication, or Ten Cents (\$0.10) per page, whichever is less.
6. CITY will not pay for secretarial time or secretarial overtime. CITY will not pay for secretarial tasks or tasks that should be subsumed into CONSULTANT's overhead. For example, time spent for faxing, mailing, arranging for messengers and calendaring are not acceptable charges.
7. CITY will not pay for word processing charges. This includes per page or hourly charges.
8. The CITY expects that all attorneys will have a library, be it in book or electronic form. Consequently, the CITY will not pay for electronic legal research, such as LexisNexis or Westlaw.



9. CITY will not pay for billing or discussion of bills. If CITY has questions about billing or needs additional information on bills, that is not a chargeable event; CONSULTANT should respond without charging CITY for the time required.
10. CITY appreciates when CONSULTANT has researched an issue previously and uses that research on the present case. CITY has retained CONSULTANT because of its past experience. CONSULTANT shall not charge CITY for work it has done and billed another client for in the past.
11. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.
12. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.

EXHIBITION

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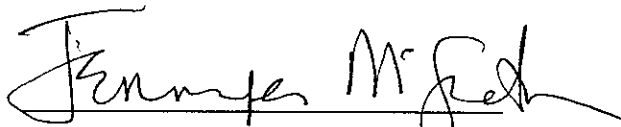
# CITY OF HUNTINGTON BEACH

## Professional Service Contracts Purchasing Certification Amendment # 1

Date: 2/12/08

1. Department: City Attorney
2. Requested By: Jennifer McGrath, City Attorney
3. Name of Consultant: Liebert Cassidy Whitmore  
*contract # ATY 007-017-01*
4. Amount of Original/Prior Contract: \$100,000
5. Additional Compensation Requested: \$100,000
6. Reason for Contract Amendment:  
The existing legal services being performed by Liebert Cassidy Whitmore will exceed \$100,000 funded in the current contract.
7. Are sufficient funds available to fund this contract? Yes ☒ No ☐
8. Business Unit and Object Code where funds are budgeted:

10030502.72525

  
Department Head Signature

  
RICHARD AMADRIL  
Central Services Manager

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		OP ICs L1888-1	DATE (MM/DD/YYYY) 12/20/07
<b>PRODUCER</b> Haver Associates, Inc. 41 W. Las Tunas Drive O Box 1509 San Gabriel CA 91776 Phone: 626-943-2200 Fax: 626-299-1010		<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>	
<b>INSURERS AFFORDING COVERAGE</b> INSURER A: <u>Westport Insurance Company</u> INSURER B: <u>Westport Insurance Company</u> INSURER C: INSURER D:		<b>NAIC #</b>	
<b>INSURED</b> Liebert Cassidy Whitmore 6033 W. Century Blvd., Ste. 500 Los Angeles CA 90045			

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED AND, WITHOUT LIMITATION, ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGREEMENT, LIMITS THEREON MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUP <input type="checkbox"/> OTHER, ADVISE RATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> TWO <input checked="" type="checkbox"/> LOG	2099768453	12/14/07	12/14/08	EACH OCCURRENCE: \$2,000,000 DAMAGE TO RENTED PREMISES (CA residents): \$600,000 MED EXP (any one person): \$10,000 PERSONAL & ADV INJURY: \$2,000,000 GENERAL AGGREGATE: \$4,000,000 PRODUCTS - COMMERCIAL: \$4,000,000
<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> LEASED/RENTED AUTOS <input checked="" type="checkbox"/> NEWLY ACQUIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	2099768453	12/14/07	12/14/08	BODILY INJURY (per accident): \$1,000,000 BODILY INJURY (per person): \$1,000,000 PROPERTY DAMAGE (per accident): \$1,000,000 AUTO ONLY - CA ACCIDENT: \$1,000,000 OTHER THAN AUTO ONLY: CA ACC \$1,000,000, AGG \$1,000,000
<b>BARBARA LIABILITY</b> <input type="checkbox"/> ANY AUTO	NOT COVERED			
<b>EXCESS/SHORTFALL LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> RETENTION: \$10,000	2099769408	12/14/07	12/14/08	EACH OCCURRENCE: \$2,000,000 AGGREGATE: \$2,000,000
<b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b> ANY EMPLOYER'S LIABILITY EXCLUDED? IF YES, ADVISE UNDER SPECIAL PROVISIONS LIMIT	NOT COVERED			WORKERS COMPENSATION: \$1,000,000 EMPLOYERS LIABILITY: \$1,000,000 E.L. EACH ACCIDENT: \$1,000,000 E.L. DISEASE - CA EMPLOYEE: \$1,000,000 E.L. DISEASE - POLICY LIMIT: \$1,000,000
<b>OTHER</b> Professional Liab.	LLF0100455	12/10/07	12/10/08	Each Clm: \$2,000,000 Aggregate: \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

\*10 Day Notice of Cancellation in the event of non-payment of premium.

Professional Liability Deductible: \$100,000.00

## CERTIFICATE HOLDER

**CITYHUN**  
 City of Huntington Beach  
 2000 Main Street  
 Huntington Beach, CA 92648

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION

DATE THEREOF, THE INSURANCE INSURER WILL SUBMIT TO MAIL

30 DAYS WRITTEN

NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL

IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR

REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Shirley A. Hampton*

ACORD 26 (2001/08)

© ACORD CORPORATION 1988  
 City of Huntington Beach  
 City Attorney's Office

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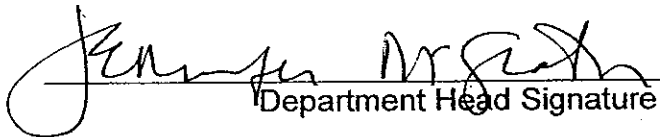
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## INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

1. Requested by: Jennifer McGrath, City Attorney
2. Date: March 28, 2006
3. Name of contractor/permittee: Liebert Cassidy Whitmore
4. Description of work to be performed: consultant to provide legal services, including but not limited to personnel and labor law, employment discrimination, wrongful termination, retirement law, employee discipline, employee grievances, "meet and confer" labor negotiation services pursuant to the Meyers-Milias-Brown Act, and related matters
5. Value and length of contract: Three years.
6. Waiver/modification request: Waiver of no deductible requirement.
7. Reason for request and why it should be granted: Unable to obtain policy with no deductible.
8. Identify the risks to the City in approving this waiver/modification: Minimal.

  
Department Head Signature

5/21/06

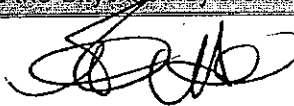
Date:

### APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

**1. Risk Management**

☒ Approved ☐ Denied



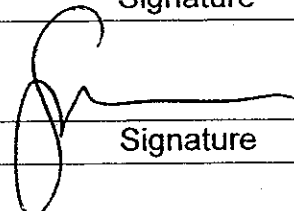
Signature

5/15/06

Date

**2. City Attorney's Office**

☒ Approved ☐ Denied



Signature

5-5-06

Date

**3. City Administrator's Office**

☐ Approved ☐ Denied

Signature

Date

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Administrative Services.

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# ATTACHMENT #2

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PROFESSIONAL SERVICES CONTRACT BETWEEN  
THE CITY OF HUNTINGTON BEACH AND  
LIEBERT CASSIDY WHITMORE  
FOR  
LEGAL SERVICES

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PROFESSIONAL SERVICES CONTRACT BETWEEN  
THE CITY OF HUNTINGTON BEACH AND  
LIEBERT CASSIDY WHITMORE  
FOR  
LEGAL SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 22 day of MAY 2006, by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY, and LIEBERT CASSIDY WHITMORE, a California professional corporation ("CONSULTANT").

WHEREAS, CITY desires to engage the services of a consultant to provide legal services, including but not limited to personnel and labor law, employment discrimination, wrongful termination, retirement law, employee discipline, employee grievances, "meet and confer" labor negotiation services pursuant to the Meyers-Miliás-Brown Act, and related matters; and

Pursuant to documentation on file in the office of the City Clerk, the provisions of the Huntington Beach Municipal Code, Chapter 3.03, relating to procurement of professional service contracts have been complied with; and

CONSULTANT has been selected to perform these services,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide the following legal services and representation in the following subject areas:

- Personnel and Labor Law.
- Employment Discrimination.

- Wrongful Termination.
- Retirement Law, including PERS.
- Employee Discipline.
- "Meet and Confer" pursuant to the Meyers-Miliias-Brown Act.
- Such related matters as the City Attorney may assign.

These services shall sometimes hereinafter be referred to as the "PROJECT."

2. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement.

3. TERM; TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of CONSULTANT are to commence as soon as practicable after the execution of this Agreement by CITY (the "Commencement Date"). This Agreement shall expire on December 31, 2009, unless sooner terminated as provided herein. All tasks shall be completed in a timely and professional manner.

4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT on a time and materials basis at the rates specified in **Exhibit "A,"** which is attached hereto and incorporated into this Agreement by this reference. In no event shall the compensation exceed One Hundred Thousand Dollars (\$100,000) during the three -year term of the Agreement, absent City Council approval.

5. RESERVED

6. METHOD OF PAYMENT

CONSULTANT shall be paid pursuant to the terms of **Exhibit "A,"** which is attached hereto and incorporated by reference into this Agreement.

7. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that title to all materials prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to CITY, and CONSULTANT shall turn these materials over to CITY upon expiration or termination of this Agreement or upon PROJECT completion, whichever shall occur first. These materials may be used by CITY as it sees fit.

8. HOLD HARMLESS

CONSULTANT hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any) negligent performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CONSULTANT, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. CITY shall have the right to approve selection of CONSULTANT's counsel, except that such approval shall not be unreasonably withheld and shall be in accordance with the terms of CONSULTANT's professional liability policy. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy

limits do not act as limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall obtain and furnish to CITY a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's professional liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate. The above-mentioned insurance shall not contain a self-insured retention, "deductible" or any other similar form of limitation on the required coverage except with the express written consent of CITY. A claims-made policy shall be acceptable if the policy further provides that:

- A. The policy retroactive date coincides with or precedes the initiation of the scope of work (including subsequent policies purchased as renewals or replacements).
- B. CONSULTANT shall notify CITY of circumstances or incidents that might give rise to future claims.

CONSULTANT will make every effort to maintain similar insurance during the required extended period of coverage following PROJECT completion. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

10. CERTIFICATE OF INSURANCE

Prior to commencing performance of the work hereunder, CONSULTANT shall furnish to CITY a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

- A. provide the name and policy number of each carrier and policy;
- B. shall state that the policy is currently in force; and
- C. shall promise that such policy shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

CONSULTANT shall maintain the foregoing insurance coverage in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverage shall not derogate from CONSULTANT's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of the policy of insurance. CONSULTANT shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

11. INDEPENDENT CONTRACTOR

CONSULTANT is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONSULTANT shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONSULTANT and its officers, agents and

employees and all business licenses, if any, in connection with the PROJECT and/or the services to be performed hereunder.

12. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder at any time with or without cause, and whether or not the PROJECT is fully complete. Any termination of this Agreement by CITY shall be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In the event of termination, all finished and unfinished documents, exhibits, report, and evidence shall, at the option of CITY, become its property and shall be promptly delivered to it by CONSULTANT.

13. ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned, delegated or subcontracted by CONSULTANT to any other person or entity without the prior express written consent of CITY. If an assignment, delegation or subcontract is approved, all approved assignees, delegates and subconsultants must satisfy the insurance requirements as set forth in Sections 9 and 10 hereinabove.

14. COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work, item or material produced as a result of this Agreement.

15. CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have



any financial interest in this Agreement in violation of the applicable provisions of the *California Government Code*.

16. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 1 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONSULTANT may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach  
ATTN: SCOTT FIELD  
2000 Main Street  
Huntington Beach, CA 92648

TO CONSULTANT:

Brian P. Walter, Esq.  
Liebert Cassidy & Whitmore  
6033 West Century Blvd., Suite 500  
Los Angeles CA 90045

17. CONSENT

When CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

18. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

19. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

20. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

21. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

22. IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the *United States Code* regarding employment verification.

23. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

24. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

25. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

26. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

27. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this

Agreement, and supercede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized offices the day, month and year first above written.

CONSULTANT,  
LIEBERT CASSIDY WHITMORE  
A Professional Law Corporation

CITY OF HUNTINGTON BEACH,  
a municipal corporation of the State of California

By: *Melanie M. Poturica*

Melanie M. Poturica  
print name

ITS: (circle one) Chairman/President/Vice President

*Penelope Cullen*  
City Administrator  
(Pursuant To HBMC §3.03.100)

AND

By: *Bruce Barsook*

Bruce Barsook  
print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst.  
Secretary - Treasurer

APPROVED AS TO FORM:

*Jennifer McFarland*  
City Attorney  
5/21/06

*STP*

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## EXHIBIT "A"

### Payment Schedule (Hourly Payment)

#### A. Hourly Rate

CONSULTANT'S fees for such services shall be based upon the following hourly rate and cost schedule:

Brian Walter	\$260
Richard Kreisler	\$260
Scott Tiedemann	\$260
Bruce Barsook	\$260
Geoff Sheldon	\$210
Steve Berliner	\$210
Jill Babington	\$190
Laura Kalty	\$190
Connie Chuang	\$160

Other Partners and Associates, at comparable rates to be established at start of services.

The above rates may be adjusted upwards upon the annual anniversary of the execution of this Agreement, in an amount not more than the fees the CONSULTANT offers its most favored clients, or 5%, whichever is less.

#### B. Travel

1. Charges for time during travel are reimbursable at the attorney's hourly rate for the time it takes to travel from the office to the client and back, or the time it takes from the attorney's residence to the client and back, whichever is less.
2. Automobile expenses are limited to the IRS standard business mileage rate, currently \$0.445/mile.

#### C. Billing

1. CONSULTANT shall submit to CITY an invoice for each monthly payment due. Such invoice shall:
  - A) Reference this Agreement;
  - B) Describe the services performed;
  - C) - Show the total amount of the payment due;
  - D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
  - E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval, and at the option of CITY, the Agreement may be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

2. All billing shall be done monthly in one-tenth-hour (0.10) increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.

Minimum billing charges are unacceptable. CONSULTANT shall only charge for actual time spent. For example, minimum of 0.2 hours for phone calls or 0.4 hours for letters is unreasonable unless that is an accurate measure of time spent.

3. A separate billing name and account shall be given to each case or matter assigned.
4. Each case or matter's monthly bill should include a life-to-date total. That total should provide, at a glance, the total fees and costs incurred to date for the case or matter.
5. No charge shall be made for email, telephone, cellular phone, ordinary copying from in-house copiers, and postage. All other charges for costs are billable at actual cost. A copy of all service bills/costs should accompany the billing for each single item that exceeds Seventy-Five Dollars (\$75.00). The fee for the sending or receiving of facsimiles shall not exceed Fifty Cents (\$0.50) per page. Extraordinary photocopier costs should be no more than the actual cost of duplication, or Ten Cents (\$0.10) per page, whichever is less.
6. CITY will not pay for secretarial time or secretarial overtime. CITY will not pay for secretarial tasks or tasks that should be subsumed into CONSULTANT's overhead. For example, time spent for faxing, mailing, arranging for messengers and calendaring are not acceptable charges.
7. CITY will not pay for word processing charges. This includes per page or hourly charges.
8. The CITY expects that all attorneys will have a library, be it in book or electronic form. Consequently, the CITY will not pay for electronic legal research, such as LexisNexis or Westlaw.



9. CITY will not pay for billing or discussion of bills. If CITY has questions about billing or needs additional information on bills, that is not a chargeable event; CONSULTANT should respond without charging CITY for the time required.
10. CITY appreciates when CONSULTANT has researched an issue previously and uses that research on the present case. CITY has retained CONSULTANT because of its past experience. CONSULTANT shall not charge CITY for work it has done and billed another client for in the past.
11. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.
12. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.

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# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID LC  
LIEBE-1

DATE (MM/DD/YYYY)  
05/05/06

**PRODUCER**  
Narver Associates, Inc.  
641 W. Las Tunas Drive  
PO Box 1509  
San Gabriel CA 91776  
Phone: 626-943-2200 Fax: 626-299-1010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**

Liebert Cassidy Whitmore  
Becky Salazar  
6033 W. Century Blvd., Ste. 500  
Los Angeles CA 90045

**INSURERS AFFORDING COVERAGE**

NAIC #

INSURER A: Fireman's Fund Insurance  
INSURER B: Westport Insurance Company  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	AZC80794454	12/14/05	12/14/06	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$ INCLUDED
A		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	AZC80794454	12/14/05	12/14/06	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	APPROVED AS TO FORM JENNIFER McGRATH CITY ATTORNEY			EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B		<b>OTHER</b> Prof Liability INCLUDES PERSONAL	LLF010045-3 INJURY OF \$1,000,000	12/10/05	12/10/06	EA CLAIM 2,000,000 AGGREGATE 2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

30 day notice of cancellation in the event of a non-payment of premium. The certificate holder is named as an additional insured as respects to the General Liability per the ABC Multicover Endorsement per policy number AZC80794454. Professional Liability Deductible: \$100,000.00

**CERTIFICATE HOLDER**

CITYHUN

City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~SEND BY MAIL~~ 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~AT THE ADDRESS OF THE POLICY~~ ~~OR~~ ~~AT THE ADDRESS OF THE INSURED~~ ~~OR~~ ~~AT THE ADDRESS OF THE INSURER~~

AUTHORIZED REPRESENTATIVE

*[Signature]*

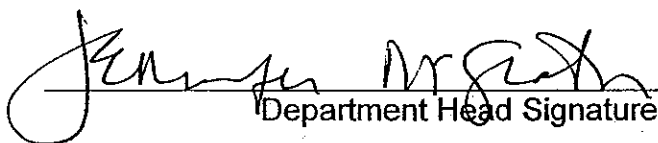
APPROVED AS TO FORM:

JENNIFER McGRATH, City Attorney



# INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

1. Requested by: Jennifer McGrath, City Attorney
2. Date: March 28, 2006
3. Name of contractor/permittee: Liebert Cassidy Whitmore
4. Description of work to be performed: consultant to provide legal services, including but not limited to personnel and labor law, employment discrimination, wrongful termination, retirement law, employee discipline, employee grievances, "meet and confer" labor negotiation services pursuant to the Meyers-Milias-Brown Act, and related matters
5. Value and length of contract: Three years.
6. Waiver/modification request: Waiver of no deductible requirement.
7. Reason for request and why it should be granted: Unable to obtain policy with no deductible.
8. Identify the risks to the City in approving this waiver/modification: Minimal.

  
Department Head Signature

5/21/06


Date:

## APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

### 1. Risk Management

☒ Approved ☐ Denied

  
Signature

5/15/06  
Date

### 2. City Attorney's Office

☒ Approved ☐ Denied

  
Signature

5-5-06  
Date

### 3. City Administrator's Office

☐ Approved ☐ Denied

Signature

Date

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Administrative Services.

**IMPORTANT**

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**E8.30**

## ABC MultiCover - AB 91 89 05 99

This endorsement modifies insurance provided under the following:

### American Business Coverage

Your policy is broadened and clarified as follows:

#### 1. Non Employment Discrimination Liability

Unless Personal Injury or Advertising Injury is excluded from this policy:

A. Section III - Definitions, Item 17. Personal Injury is amended to include:

f. Discrimination

B. Section III - Definitions, Item 2. Advertising Injury is amended to include:

e. Discrimination

C. Section III - Definitions is amended to include:

30. Discrimination means the unlawful treatment of individuals based on race, color, ethnic origin, gender, religion, age, or sexual preference.

D. Section II - Liability Coverage, Part H. Exclusions, Item 1.p Personal Injury or Advertising Injury is amended to include:

(11) Arising out of discrimination directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured; or

(12) Arising out of discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any dwelling,

permanent lodging, or premises by or at the direction of any insured; or

(13) Arising out of discrimination, if insurance thereof is prohibited by law; or

(14) Fines, penalties, specific performance, or injunctions levied or imposed by a governmental entity, or governmental code, law, or statute because of discrimination.

#### 2. Blanket Additional Insured

Section II - Liability Coverage, Part I. Who Is An Insured, Item 2. is amended to include:

f. Any person or organization that you are required by a written insured contract to include as an insured, subject to all of the following provisions:

(1) Coverage is limited to their liability arising out of:

(a) the ownership, maintenance or use of that part of the premises, or land owned by, rented to, or leased to you; or


(b) your ongoing operations performed for that insured; or

(c) that insured's financial control of you; or

(d) the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s); or

This Form must be attached to Change Endorsement when issued after the policy is written.  
One of the Fireman's Fund Insurance Companies as named in the policy

  
Secretary

  
President

- (c) a state or political subdivision permit issued to you.
- (2) Coverage does not apply to any occurrence or offense:
  - (a) which took place before the execution of, or subsequent to the completion or expiration of, the written insured contract, or
  - (b) which takes place after you cease to be a tenant in that premises.
- (3) With respect to architects, engineers, or surveyors, coverage does not apply to Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the rendering or the failure to render any professional services by or for you including:
  - (a) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and
  - (b) Supervisory, inspection, or engineering services.

If an Additional Insured endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

### 3. Blanket Additional Insured for Vendors

Unless the Products-Completed Operations Hazard is excluded from this policy, Section II - Liability Coverage, Part I. Who Is an Insured, Item 2. is amended to include:

- g. Any vendor but only with respect to Bodily Injury or Property Damage arising out of your products which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
  - 1. The insurance afforded the vendor does not apply to:
    - a. Bodily Injury or Property Damage for which the vendor is obligated to pay damages by reason of the

assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container.
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

- 2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

If an Additional Insured - Vendors endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

#### 4. Blanket Waiver of Subrogation

Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions, is amended to include:

##### 6. Transfer of Rights of Recovery Against Others to us and Blanket Waiver of Subrogation

- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair those rights. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.
- b. If required by a written insured contract, we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your operations or your work for that person or organization.

#### 5. Broadened Named Insured

Section II - Liability Coverage, Part I. Who Is An Insured, Item 4. is replaced with:

4. All of your subsidiaries, companies, corporations, firms, or organizations, as now or hereafter constituted, qualify as Named Insured under this policy if:
  - (a) you have the responsibility of placing insurance for each such entity; and
  - (b) coverage for the entity is not otherwise more specifically provided; and
  - (c) the entity is incorporated or organized under the laws of the United States of America.

But each entity is insured only while you own, during the policy period, a controlling interest in such entity of greater than 50% of the stock or assets. However:

- (a) Coverage under this provision is afforded only until the end of the policy period, or the 12 month anniversary of the policy inception date, whichever is earlier;
- (b) Coverage C does not apply to bodily injury or property damage that occurred

before you acquired or formed the organization;

- (c) Coverage C does not apply to personal injury or advertising injury arising out of an offense committed before you acquired or formed the organization.

#### 6. Medical Payments

Unless Coverage D. Medical Payments is excluded from this policy:

- A. Section II - Liability Coverage, Part H. Exclusions, Item 2.f. is replaced with:
  - f. Included within the products-completed operations hazard. However, this exclusion does not apply to expenses for dental services.
- B. Section II - Liability Coverage, Part G. Coverage, Item 2., is amended to include:
  - c. Coverage D. Medical Payments is primary and not contributing with any other insurance, even if that other insurance is primary also.

#### 7. Tenant's Legal Liability

- A. Section III - Liability Coverage, Part J. Liability and Medical Payments Limits of Insurance, Item 3. is replaced with:
  3. The most we will pay under Coverage C - Liability for damages because of property damage to premises while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner:
    - a. arising out of any Covered Cause of Loss shall be the greater of:
      - (1) \$1,000,000; or
      - (2) The Tenant's Legal Liability limit shown in the Declarations.

#### 8. Chartered Aircraft

Section II - Liability Coverage, Coverage C, Part H. Exclusions, Item 1.g. is amended to include:

- (5) An aircraft in which you have no ownership interest and that you have chartered with crew.



**9. Coverage Territory Broadened**

Section III - Definitions, Item 5.a. is replaced with:

- a. The United States of America (including its territories and possessions), Puerto Rico, Canada, Bermuda, the Bahamas, the Cayman Islands and the British Virgin Islands.

**10. Broadened Advertising Injury**

Unless Advertising Injury is excluded from this policy:

A. Section III - Definitions, Item 2. is replaced with:

- 2. Advertising Injury means injury arising out of one or more of the following offenses:
  - a. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - b. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of trademark, copyright, title or slogan.

B. Section II - Liability Coverage, Coverage C, Part H. Exclusions, Items 1.p.(1) and (2) are replaced with:

- (1) Arising out of oral, written, televised or videotaped publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written, televised or videotaped publication of material whose first publication took place before the beginning of the policy period;

**11. Broadened Personal Injury**

Unless Personal Injury is excluded from this policy, Section III - Property, Liability and Medical

Payments Definitions, Items 17.b., d. and e. are replaced with:

- b. Malicious prosecution or abuse of process;
- d. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;

**12. Broadened Personal or Advertising Injury**

Unless Personal Injury or Advertising Injury is excluded from this policy, Section II - Liability Coverage, Coverage C, Part H. Exclusions, Item 1.p.(4) Exclusions is deleted in its entirety.

**13. Fellow Employees Coverage**

Section II - Liability Coverage, Part I. Who Is an Insured, Item 2.a.(1) is amended as follows:

- (1) Personal Injury to you or to a co-employee while in the course of his or her employment, or the spouse, child, fetus, embryo, parent, brother, sister or any member of the household of that employee or co-employee as a consequence of such Personal Injury, or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

**14. Mental Anguish Is Included in Bodily Injury**

Section III - Definitions, Item 4. is replaced with:

- 4. Bodily injury means bodily injury, sickness or disease sustained by a person. It includes death or mental anguish which result at any time from such physical harm, physical sickness or physical disease. Mental anguish means any type of mental or emotional illness or disease.

**15. Unintentional Failure to Disclose Hazards**

Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions, is amended to include:

#### 6. Unintentional Failure to Disclose Hazards

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

#### 16. Supplementary Payments, Increase Limits

Section II - Liability Coverage, Part G. Coverage, Items 1.e. (2) and (4) are replaced with:

- (2) The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit including substantiated loss of earnings up to \$500 a day because of time off work.

#### 17. Per Location Aggregate

- A. Section II - Liability Coverage, Part J. Limits of Insurance, Item 4. is amended to include:

The Aggregate Limit of Insurance applies separately to each location owned by you, rented to you, or occupied by you with the permission of the owner.

- B. Section III - Property, Liability and Medical Payments Definitions, is amended to include:

31. Location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of railroad.

#### 18. Amended Duties in the Event of an Occurrence, Offense Claim or Suit

Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions, Items 2.a. and b. are replaced with:

- a. In the event of an occurrence, offense, claim, or suit, you must promptly notify us. Your duty to promptly notify us is effective when your executive officers, partners, members, or

legal representatives are aware of the General Liability occurrence, offense, claim, or suit. Knowledge of an occurrence, offense, claim, or suit by other employee(s) does not imply you also have such knowledge.

- b. To the extent possible, notice to us should include:

- (1) How, when and where the occurrence or offense took place;
- (2) The names, addresses, and telephone numbers of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the occurrence, offense, claim, or suit.

#### 19. Common Policy Conditions (AB 00 09 A 01 87), Part H. Other Insurance, Item 2. is replaced with:

##### 2. Coverage C - Liability

If other valid and collectible insurance is available to any insured for a loss we cover under Coverage C of this Coverage Part our obligations are limited as follows:

- a. The insurance provided under this policy is primary if you are required by a written insured contract to include any person or organization as an insured, but only with respect to that insured's liability arising out of the ownership, maintenance, or use of that part of the premises owned by or rented to you, or your work for that insured by or for you. Any other insurance available to that person or organization is excess and noncontributory with this insurance, or;
- b. Except for the circumstance described in 2.a., above, the insurance provided under this policy is excess over any other liability insurance available to any insured whether such other insurance is written as primary, excess, contingent or any other basis. An exception applies when any insured specifically has purchased excess insurance to apply in excess of the limits of insurance shown in the Declarations of this Coverage Part for Coverage C.

All other terms and conditions of the policy apply.

**STATE  
COMPENSATION  
INSURANCE  
FUND**

P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

**CERTIFICATE OF WORKERS' COMPENSATION INSURANCE**

ISSUE DATE: 04-01-2006

GROUP: 000388  
POLICY NUMBER: 0001336-2006  
CERTIFICATE ID: 41  
CERTIFICATE EXPIRES: 04-01-2007  
04-01-2006/04-01-2007

CITY OF HUNTINGTON BEACH  
RISK MANAGEMENT DIVISION  
2000 MAIN ST  
HUNTINGTON BEACH CA 92648

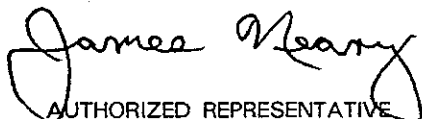
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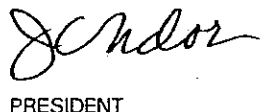
This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days advance written notice to the employer.

We will also give you 30 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

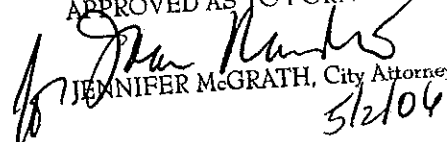
  
AUTHORIZED REPRESENTATIVE

  
PRESIDENT

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 04-01-2005 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

APPROVED AS TO FORM:

  
JENNIFER McGRATH, City Attorney  
5/2/06

EMPLOYER

LIEBERT CASSIDY WHITMORE A PROFESSIONAL  
CORPORATION  
6033 W CENTURY BL # 500  
LOS ANGELES CA 90045

SC

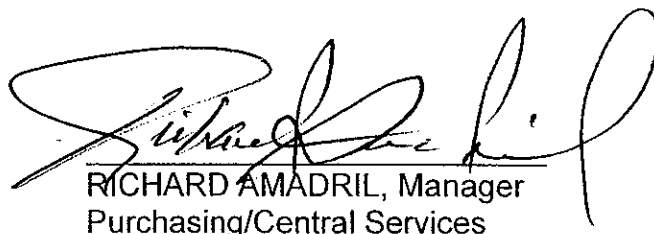
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## PROFESSIONAL SERVICE CONTRACTS PURCHASING CERTIFICATION

1. Requested by: JENNIFER McGRATH, City Attorney
2. Date: May 15, 2006
3. Name of consultant: Liebert Cassidy Whitmore
4. Description of work to be performed: Provide legal services, including but not limited to personnel and labor law, employment discrimination, wrongful termination, retirement law, employee discipline, employee grievances, "meet and confer" labor negotiation services pursuant to the Meyers-Milias-Brown Act, and related matters.
5. Amount of the contract: \$100,000.00
6. Are sufficient funds available to fund this contract?<sup>1</sup> ☒ Yes, ☐ No
7. Company number and object code where funds are budgeted: 10015101.69375
8. Is this contract generally described on the list of professional service contracts approved by the City Council<sup>1</sup>? ☒ Yes, ☐ No
9. Is this contract within \$25,000 or 25% (whichever is less) of the amount stated on the list of professional service contracts approved by the City Council?<sup>1</sup>  
☒ Yes, ☐ No
10. Were (at least) informal written proposals requested of three consultants?  
☒ Yes, ☐ No
11. Attach list of consultants from whom proposals were requested (including a contact telephone number).
12. Attach proposed scope of work.
13. Attach proposed payment schedule.

  
RICHARD AMADRIL, Manager  
Purchasing/Central Services

E8.37

<sup>1</sup> If the answer to any these questions is "No," the contract will require approval from the City Council.

## ATTORNEY FIRM PANEL REQUEST FOR QUALIFICATIONS RESPONSES

Attorney Firm:	Location:	Areas of Specialty:	Fees:
<b>Gibbs, Giden, Locher &amp; Turner LLP</b> Attn: William Locher 40 attorney firm	34th Floor 2029 Century Park East Los Angeles, CA 90067-3039  Tel: 310/552-3400	1. Public works, incl. construction litigation and public contracts (Specialist: Glenn Turner) 2. Employee discipline and termination (Specialist: Gerald Griffin) 3. Labor and personnel (Specialist: Gerald Griffin) 4. Public agency liability (Specialist: Michael Geibel)	Sr. Partner \$240-250/hr Partner \$225-235/hr Other attys \$155-205
<b>Greines, Martin, Stein &amp; Richland LLP</b> Attn: Alison Turner 10 partners	5700 Wilshire Blvd. Suite 375 Los Angeles, CA 90036  Tel: 310/859-7811	Appellate and law and motion matters in state and federal courts – specializing in public entities (Specialists: Alison Turner, Timothy Coates, Alan Diamond, Carolyn Oill)	Partner \$275/hr Associates \$235/hr
<b>Kinkle, Rodiger and Spriggs</b> Attn: David P. Lenhardt	837 North Ross Street Santa Ana, CA 92702-1558  Tel: 714/835-9011	1. Labor and personnel 2. Employee discipline and termination, including discrimination, disability and retaliation 3. Public agency liability, including dangerous condition of public property and inverse condemnation 4. Appellate practice 5. Public works, including construction litigation 6. Police-related litigation, including 42 U.S.C. §1983 litigation (Specialists: David Lenhardt, A. J. Pyka)  Experienced with defense of public entities.	All attorneys – flat rate of \$165/hr

<b>Thomas J. Feeley, P.C.</b> Attn: Thomas J. Feeley	700 South Flower Street Suite 2710 Los Angeles, CA 90017-3101  Tel: 213/236-9670	Practice is dedicated exclusively to the representation of public entities and employees, especially: 1. Police litigation 2. Labor and personnel litigation 3. Dangerous condition, inverse condemnation litigation 4. Employee discipline and termination (Specialists: Thomas J. Feeley, Linda Daube, Diana Fields, Candace Brady)	\$150/hr
<b>Carpenter, Rothans &amp; Dumont</b> Attn: Mark D. Rutter  9 attorneys	888 S. Figueroa Street Suite 1960 Los Angeles, CA 90017  Tel: 213/228-0400	Specialize in: 1. Police-related litigation, including Section 1983 2. Public agency liability, including dangerous condition of public property and inverse condemnation 3. Employment litigation  Extensive police excessive force defense in both federal and state courts. Extensive municipal experience. (Specialists: Mark D. Rutter, Martin L. Carpenter, Steven J. Rothans, Louis ROETERS, Dumont)	Partners and Of Counsel: \$140/hr Associates: \$130/hr  No charge for conferences, strategy planning between attorneys
<b>Burke, Williams &amp; Sorensen, LLP</b> Attn: Mark J. Mulkerin  60 lawyers in six offices	5 Park Plaza, Suite 1280 Irvine, CA 92614-2547  Tel: 949/863-3363	Specialize in: 1. Appellate practice (Specialist: Stephen R. Onstot) 2. Employee discipline and termination, including discrimination, disability, and retaliation 3. Labor and personnel (Specialists: Bonifacio Bonny Garcia) 4. Police-related litigation, including Section 1983 (Specialist: Bruce C. Gridley) 5. Public agency liability, including dangerous condition of public property and inverse condemnation (Specialist: Bruce C. Gridley)	Partners: \$220-265/hr Associates: \$175-210/hr

			6. Public works, including construction litigation (Specialist: Bruce C. Gridley)  Has served more than 50 local governmental entities	
<b>Richards Watson Gershon</b> Attn: Robert C. Ceccon  More than 65 lawyers	355 South Grand Avenue, 40th Floor Los Angeles, CA 90071-3101  Tel: 213/626-8484		<p>Specialize in:</p> <ol style="list-style-type: none"> <li>1. Appellate practice</li> <li>2. Employee discipline and termination, including discrimination, disability and retaliation</li> <li>3. Labor and personnel</li> <li>4. Police liability litigation</li> <li>5. Public agency liability litigation, including dangerous condition of public property litigation</li> <li>6. Inverse condemnation litigation and public works, including construction litigation</li> </ol> <p>Team leader will be Robert C. Ceccon, assisted by Peter Pierce, Saskia Asamura, Michael Yoshiba and Tilden Kim.</p> <p>Experienced in representing governmental entities in litigation. City attorney in 26 cities and general counsel in 25 redevelopment agencies.</p>	\$235/hr
<b>Liebert Cassidy Whitmore</b> Attn: Brian Walter	6033 West Century Boulevard, Suite 500 Los Angeles, CA 90045  Tel: 310/981-2000		<p>Specialize in municipal defense, including:</p> <ol style="list-style-type: none"> <li>1. Litigation practice</li> <li>2. Appellate practice</li> <li>3. Employee discipline and termination, including discrimination, disability and retaliation</li> <li>4. Labor and personnel</li> </ol> <p>Specialists: Brian Walter, Richard Kreisler, Scott Tiedemann, Bruce Barsook, Geoff Sheldon, Steve Berliner, Jill Babington, Laura Kalty and Connie Chuang</p>	<p>Partners: \$260/hr Associates: \$160-210/hr</p> <p>Travel time is billed at attorney's hourly rate.</p>



<b>Best Best &amp; Krieger LLP</b> Attn: Scott H. Campbell  More than 180 lawyers	5 Park Plaza, Suite 1500 Irvine, CA 92614  Tel: 949/263-2600	Most experienced and largest full-service public agency firm in Calif.; more than 100 years of service. Currently serving 75 cities/towns in Calif.  Qualified in areas of appellate practice; employee discipline and termination; labor and employment; police-related litigation; police agency liability; and public works matters	Partners: \$225/hr Sr. Associates: \$195/hr Associates: \$175/hr or blended rate of \$210/hr for all attorneys
<b>Aleshire &amp; Wynder</b> Attn: David J. Aleshire  15 attorneys	18881 Von Karman Ave. Suite 400 Irvine, CA 92612  Tel: 949/223-1180	Specialize in municipal law practice. Attorney in the areas of Redevelopment, Toxics, Endangered Species; Litigation; Tort and Police Liability; Labor and Employment; Public Finance.  Represent 6 cities, over 20 public entities; interested in long-term relationships.	Average Cost: \$150-\$190/hr
<b>Jones &amp; Mayer</b> For proposal info: Kimberly Hall Barlow (714) 446-1400  Attn: Richard D. Jones  16 attorneys – 3 contract	3777 North Harbor Blvd. Fullerton, CA 92835  Tel: 714/446-1400	Specialize in transactional, advisory and litigation representation of public entities.  Serves five cities and many other public agencies.  Lead attorneys: Richard Jones, Martin Mayer, Kimberly Hall Barlow, Harold Potter, Paul Coble.	All attorneys --Blended billing rate of \$160/hr  no mileage billed
<b>Kane, Ballmer &amp; Berkman</b> Attn Joseph Pannone  13 attorneys	515 South Figueroa Street, Suite 1850 Los Angeles, CA 90071  Tel: 213/617-0480	Broad experience in appellate practice, inverse condemnation and public works --serve at least 34 cities  Appellate Practice Specialists – June Ailin, Don Johnson, Stephanie Scher, Joseph Pannone	Senior partner: \$200/hr Partner: \$200/hr Senior Counsel: \$200/hr Senior Assoc.: \$170/hr Assoc.: \$145/hr

<b>Woodruff, Spradlin &amp; Smart</b> Attn: M. Lois Bobak 26 attorneys	701 South Parker Street Suite 8000 Orange, CA 92868-4760 Tel: (714) 558-7000	Specializes in the representation of local government agencies. Has represented CHB in several prior appellate cases. Appellate lead attorney: M. Lois Bobak Employment discipline and termination: Terry Andrus and Barbara Raileanu Police-related litigation, including Section 1983: Daniel Spradlin Public agency liability, including dangerous condition of public property and inverse condemnation: Daniel Spradlin and Magdalena Lona-Wiant Public works, including construction litigation: Joseph Forbath	Mr. Spradlin: \$210/hr All other attorneys: \$155/hr
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# **ATTACHMENT #3**

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AMENDMENT NO. 1 TO PROFESSIONAL SERVICES CONTRACT  
BETWEEN THE CITY OF HUNTINGTON BEACH AND  
NORMAN A. TRAUB ASSOCIATES FOR  
CONFIDENTIAL PERSONNEL INVESTIGATION SERVICES

THIS AMENDMENT NO. 1 is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY, and Norman A. Traub associates Investigation Services, an individual, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY and CONSULTANT are parties to that certain agreement, dated March 2, 2007, entitled "Professional Services Contract Between the City of Huntington Beach and Norman A. Traub Associates Investigation Services for Confidential Personnel Investigation Services which agreement shall hereinafter be referred to as the "Original Agreement," and

Since its execution, CITY and CONSULTANT wish to amend the Original Agreement to reflect additional compensation to be paid to CONSULTANT,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. ADDITIONAL COMPENSATION

Section 5 of the Original Agreement, entitled "Compensation," is hereby amended to read as follows:

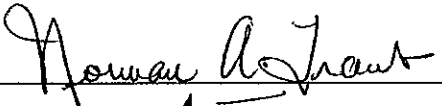
5. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT on a time and materials basis at the rates specified in **Exhibit "B"** which is attached hereto and incorporated by reference into this Agreement, an additional fee not to exceed \$100,000, including all costs and expenses. This additional sum shall be added to the original sum of \$45,000, for a new total contract amount of One Hundred Forty Five Thousand Dollars (\$145,000.00).

2. REAFFIRMATION

Except as specifically modified herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

CONSULTANT,  
NORMAN A. TRAUB ASSOCIATES  
INVESTIGATION SERVICES, an  
Individual

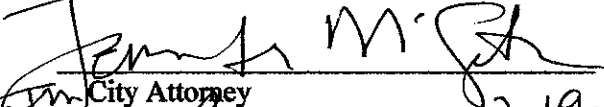
By:   
NORMAN A. TRAUB  
print name

CITY OF HUNTINGTON BEACH, a  
municipal corporation of the State of  
California


\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

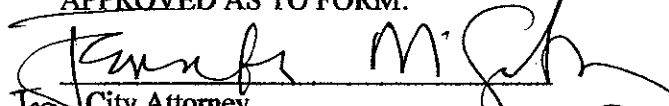
INITIATED AND APPROVED:

  
City Attorney  
2-12-08 2-19-08

REVIEWED AND APPROVED:

  
City Administrator

APPROVED AS TO FORM:

  
City Attorney  
2-12-08 2-19-08

## EXHIBIT "B"

### Payment Schedule (Hourly Payment)

#### A. Hourly Rate

CONSULTANT'S fees for such services shall be based upon the following hourly rate and cost schedule:

- \$130.00 per hour plus expenses;
- \$250 per hour (4-hour minimum) plus expenses for post investigation appearances at hearings, trials, depositions, arbitrations, legislative hearings, or personnel appeal boards. This provision shall apply if appearances are required by City or other parties to the action;
- Reimbursement for transcription of interviews;
- Reimbursement for City Business License (in the event a business license is required).

#### B. Travel

1. Charges for time during travel are not reimbursable
2. Automobile expenses are limited to the IRS standard business mileage rate of \$0.50.5.

#### C. Billing

1. All billing shall be done monthly in one-tenth-hour (0.10) increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.

Minimum billing charges are unacceptable. CONSULTANT shall only charge for actual time spent. For example, minimum of 0.2 hours for phone calls or 0.4 hours for letters is unreasonable unless that is an accurate measure of time spent.

2. Each month's bill should include a total to date. That total should provide, at a glance, the total fees and costs incurred to date for the case or matter.
3. Telephone, cellular phone and postage charges are billable at actual cost. A copy of all service bills/costs should accompany the billing for each single item that exceeds Seventy-Five Dollars (\$75.00). The fee for the sending or receiving of facsimiles shall not exceed Twenty-five Cents (\$0.25) per page. CITY will not pay a fee or charge for telephone calls or facsimiles to CITY. Photocopier costs should be no more than the actual cost of duplication, or Ten Cents (\$0.10) per page, whichever is less.
4. CITY will not pay for secretarial time or secretarial overtime. CITY will not pay for secretarial tasks or tasks that should be subsumed into CONSULTANT's overhead. For example, time spent for faxing, mailing, arranging for messengers and calendaring are not acceptable charges.
5. CITY will not pay for word processing charges. This includes per page or hourly charges.

6. The CITY expects that all attorneys will have a library, be it in book or electronic form. Consequently, the CITY will not pay for electronic legal research, such as LexisNexis or Westlaw.
7. CITY will not pay for billing or discussion of bills. If CITY has questions about billing or needs additional information on bills, that is not a chargeable event; CONSULTANT should respond without charging CITY for the time required.
8. CITY appreciates when CONSULTANT has researched an issue previously and uses that research on the present case. CITY has retained CONSULTANT because of its past experience. CONSULTANT shall not charge CITY for work it has done and billed another client for in the past.
9. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.
10. CONSULTANT shall submit to CITY an invoice for each monthly payment due. Such invoice shall:
  - A) Reference this Agreement;
  - B) Describe the services performed;
  - C) Show the total amount of the payment due;
  - D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
  - E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in Exhibit "A" may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

11. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.



**ACORD CERTIFICATE OF LIABILITY INSURANCE**OP ID JB  
TRAUB-1

DATE (MM/DD/YYYY)

02/15/08

PRODUCER  
Alliance Mgt. & Insurance Serv  
PO BOX 849  
CA Agent/Broker Lic# 0737966  
San Marcos CA 92079  
Phone: 760-471-7116 Fax: 760-471-9378

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION  
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE  
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR  
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Norman A Traub Associates  
5409 Via Fonte  
Yorba Linda CA 92886-5006

## INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: First Mercury Ins. Company

INSURER B:

INSURER C:

INSURER D:

INSURER E:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING  
ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR  
MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH  
POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Errors & Omiss <input checked="" type="checkbox"/> Owners & Contr GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC	FMMI010259-2	04/07/07	04/07/08	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ Included GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ Included
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is named as an additional insured with respect to the  
work performed by the named insured.  
Investigations, CA --

## CERTIFICATE HOLDER

City of Huntington Beach  
Office of the City Attorney  
Attn: Karen Copeland  
2000 Main Street  
Huntington Beach CA 92648

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION  
DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN  
NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL  
IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR  
REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

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## EXHIBIT "B"

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#### A. Hourly Rate

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4. CITY will not pay for secretarial time or secretarial overtime. CITY will not pay for secretarial tasks or tasks that should be subsumed into CONSULTANT's overhead. For example, time spent for faxing, mailing, arranging for messengers and calendaring are not acceptable charges.
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  - B) Describe the services performed;
  - C) Show the total amount of the payment due;
  - D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
  - E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in Exhibit "A" may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

11. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.

**ACORD CERTIFICATE OF LIABILITY INSURANCE**OP ID JB  
TRAUB-1

DATE (MM/DD/YYYY)

02/15/08

**PRODUCER**

Alliance Mgt. & Insurance Serv  
PO BOX 849  
CA Agent/Broker Lic# 0737966  
San Marcos CA 92079  
Phone: 760-471-7116 Fax: 760-471-9378

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION  
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE  
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR  
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**

Norman A Traub Associates  
5409 Via Ponte  
Yorba Linda CA 92886-5006

**INSURERS AFFORDING COVERAGE**

NAIC #

INSURER A: First Mercury Ins. Company

INSURER B:

INSURER C:

INSURER D:

INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING  
ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR  
MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH  
POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X			<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Errors & Omiss <input checked="" type="checkbox"/> Owners & Contr GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	FMMI010259-2	04/07/07	04/07/08	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$Included GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPROP AGG \$Included
				<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
				<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
				<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
				<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

Certificate holder is named as an additional insured with respect to the work performed by the named insured.  
Investigations, CA --

**CERTIFICATE HOLDER**

City of Huntington Beach  
Office of the City Attorney  
Attn: Karen Copeland  
2000 Main Street  
Huntington Beach CA 92648

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE





# CITY OF HUNTINGTON BEACH

## Professional Service Contracts Purchasing Certification Amendment # 1

Date: 02/12/08

1. Department: City Attorney
2. Requested By: Jennifer McGrath, City Attorney  
*Contract # ATY 007-017-01*
3. Name of Consultant: Norman A. Traub Associates Investigation Services
4. Amount of Original/Prior Contract: \$45,000
5. Additional Compensation Requested: \$100,000
6. Reason for Contract Amendment:  
existing confidential personnel investigation services being performed by  
Norman A. Traub Associates will exceed \$100,000.

7. Are sufficient funds available to fund this contract? Yes ☒ No ☐

8. Business Unit and Object Code where funds are budgeted:

31070601.69380

*Redan* 2/12/08  
Department Head Signature

*Richard Amadril*  
RICHARD AMADRIL  
Central Services Manager

E8 . 53

# **ATTACHMENT #4**

INTERNATIONAL

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PROFESSIONAL SERVICES CONTRACT BETWEEN  
THE CITY OF HUNTINGTON BEACH AND  
NORMAN A. TRAUB ASSOCIATES FOR  
CONFIDENTIAL PERSONNEL INVESTIGATION SERVICES

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY, and Norman A. Traub Associates Investigation Services, an individual, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to conduct confidential personnel investigations; and

Pursuant to documentation on file in the office of the City Clerk, the provisions of the Huntington Beach Municipal Code, Chapter 3.03, relating to procurement of professional service contracts have been complied with; and

CONSULTANT has been selected to perform these services,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide all services as described in Exhibit "A," which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "PROJECT."

CONSULTANT hereby designates Cynthia Blaylock and James Blaylock, who shall represent it and be its sole contact and agent in all consultations with CITY during the performance of this Agreement.

2. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement.

3. TERM; TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of CONSULTANT are to commence as soon as practicable after the execution of this Agreement by CITY (the "Commencement Date"). This Agreement shall expire on February 15<sup>th</sup> 2010, unless sooner terminated as provided herein. All tasks specified in Exhibit "A" shall be completed no later than three years from the Commencement Date of this Agreement. These times may be extended with the written permission of CITY. The time for performance of the tasks identified in Exhibit "A" are generally to be shown in Exhibit "A." This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

4. CONFIDENTIALITY.

A. Privileged and Confidential Information. Any and all documents, communications and information (including, without limitation, any oral or written communications, test results, data, drawings, charts, diagrams, maps, analyses, draft or final reports, memoranda, summaries, mental impressions, transcripts, digests, and any other written material or oral information of any kind) relating to this Agreement shall constitute "Privileged and Confidential Information." All reports, drafts of reports, memoranda, charts, maps, drawings, correspondence and documents of any kind from CONSULTANT to CITY shall be clearly marked:

"CONFIDENTIAL: ATTORNEY WORK PRODUCT"

B. Use of Privileged and Confidential Information. CONSULTANT agrees not to make any use whatsoever of Privileged and Confidential Information except for the purpose of performing the SERVICES under this AGREEMENT. As provided in section 3 Consultant shall designate an individual(s) that will responsible for performing the scope of work "Investigator(s)".

C. Treatment of Privileged and Confidential Information. CONSULTANT/Investigator(s) shall treat any Privileged and Confidential Information as subject to the attorney work product doctrine, and CONSULTANT/Investigator(s) shall maintain such Privileged and Confidential Information in confidence and shall not reveal such information to third parties, including other members of Consultant's Firm except if: (i) CITY provides prior written consent of such disclosure; or (ii) disclosure of such Privileged and Confidential Information is required by a judicial order, administrative order or subpoena. In the event disclosure is required by a judicial order, administrative order or subpoena, however, CONSULTANT shall immediately notify CITY and shall exercise its utmost diligence to object to disclosure.

5. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT on a time and materials basis at the rates specified in **Exhibit "B,"** which is attached hereto and incorporated by reference into this Agreement.

6. EXTRA WORK

In the event CITY requires additional services not included in **Exhibit "A"** or changes in the scope of services described in **Exhibit "A,"** CONSULTANT will

undertake such work only after receiving written authorization from CITY. Additional compensation for such extra work shall be allowed only if the prior written approval of CITY is obtained.

7. METHOD OF PAYMENT

CONSULTANT shall be paid pursuant to the terms of **Exhibit "B."**

8. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that title to all materials prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to CITY, and CONSULTANT shall turn these materials over to CITY upon expiration or termination of this Agreement or upon PROJECT completion, whichever shall occur first. These materials may be used by CITY as it sees fit.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall obtain and furnish to CITY a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's professional liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate. The above-mentioned insurance shall not contain a self-insured retention, "deductible" or any other similar form of limitation on the required coverage except with the express written consent of CITY. A claims-made policy shall be acceptable if the policy further provides that:

- A. The policy retroactive date coincides with or precedes the initiation of the scope of work (including subsequent policies purchased as renewals or replacements).
- B. CONSULTANT shall notify CITY of circumstances or incidents that might give rise to future claims.

CONSULTANT will make every effort to maintain similar insurance during the required extended period of coverage following PROJECT completion. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

10. CERTIFICATE OF INSURANCE

Prior to commencing performance of the work hereunder, CONSULTANT shall furnish to CITY a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

- A. provide the name and policy number of each carrier and policy;
- B. state that the policy is currently in force; and
- C. promise that such policy shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

CONSULTANT shall maintain the foregoing insurance coverage in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverage shall not derogate from CONSULTANT's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of the policy of insurance. CONSULTANT shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

11. INDEPENDENT CONTRACTOR

CONSULTANT is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONSULTANT shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONSULTANT and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT and/or the services to be performed hereunder.

12. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder at any time with or without cause, and whether or not the PROJECT is fully complete. Any termination of this Agreement by CITY shall be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In the event of termination, all finished and unfinished documents, exhibits, report, and evidence shall, at the option of CITY, become its property and shall be promptly delivered to it by CONSULTANT.

13. ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned, delegated or subcontracted by CONSULTANT to any other person or entity without the prior express written consent of CITY. If an assignment, delegation or subcontract is approved, all approved assignees, delegates and subconsultants must satisfy the insurance requirements as set forth in Sections 9 and 10 hereinabove.

14. COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work, item or material produced as a result of this Agreement.

15. CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the *California Government Code*.

16. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 1 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONSULTANT may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach  
ATTN: Jennifer McGrath, City Attorney  
2000 Main Street  
Huntington Beach, CA 92648

TO CONSULTANT:

Norman A. Traub Associates  
Investigation Services  
5409 Via Fonte  
Yorba Linda, CA 92886-5006

17. CONSENT

When CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

18. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

19. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

20. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or



provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

21. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

22. IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the *United States Code* regarding employment verification.

23. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that

pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

24. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

25. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

26. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

27. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this

Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers Mar 2 2007.

NORMAN A. TRAUB ASSOCIATES  
INVESTIGATION SERVICES,

By: Norman A. Traub  
NORMAN A. TRAUB  
print name Individual  
ITS: (circle one) Chairman/President/Vice President

CITY OF HUNTINGTON BEACH,  
a municipal corporation of the State of California

Jennifer McGrath  
3.2.07 Jennifer McGrath, City Attorney

AND

By: \_\_\_\_\_  
\_\_\_\_\_  
print name  
ITS: (circle one) Secretary/Chief Financial Officer/Asst.  
Secretary - Treasurer

APPROVED AS TO FORM:

Jennifer McGrath  
3.2.07 Jennifer McGrath, City Attorney K 2/28/07

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Administrator

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## **EXHIBIT "A"**

### **STATEMENT OF WORK:** (Narrative of work to be performed)

CONSULTANT will conduct confidential personnel investigations at the direction of the City Attorney.

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## EXHIBIT "B"

### Payment Schedule (Hourly Payment)

#### A. Hourly Rate

CONSULTANT'S fees for such services shall be based upon the following hourly rate and cost schedule:

- \$130.00 per hour plus expenses;
- \$250 per hour (4-hour minimum) plus expenses for post investigation appearances at hearings, trials, depositions, arbitrations, legislative hearings, or personnel appeal boards. This provision shall apply if appearances are required by City or other parties to the action;
- Reimbursement for transcription of interviews;
- Reimbursement for City Business License (in the event a business license is required).

#### B. Travel

1. Charges for time during travel are not reimbursable
2. Automobile expenses are limited to the IRS standard business mileage rate of \$0.48.5.

#### C. Billing

1. All billing shall be done monthly in one-tenth-hour (0.10) increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.

Minimum billing charges are unacceptable. CONSULTANT shall only charge for actual time spent. For example, minimum of 0.2 hours for phone calls or 0.4 hours for letters is unreasonable unless that is an accurate measure of time spent.

2. Each month's bill should include a total to date. That total should provide, at a glance, the total fees and costs incurred to date for the case or matter.
3. Telephone, cellular phone and postage charges are billable at actual cost. A copy of all service bills/costs should accompany the billing for each single item that exceeds Seventy-Five Dollars (\$75.00). The fee for the sending or receiving of facsimiles shall not exceed Twenty-five Cents (\$0.25) per page. CITY will not pay a fee or charge for telephone calls or facsimiles to CITY. Photocopier costs should be no more than the actual cost of duplication, or Ten Cents (\$0.10) per page, whichever is less.
4. CITY will not pay for secretarial time or secretarial overtime. CITY will not pay for secretarial tasks or tasks that should be subsumed into CONSULTANT's overhead. For example, time spent for faxing, mailing, arranging for messengers and calendaring are not acceptable charges.
5. CITY will not pay for word processing charges. This includes per page or hourly charges.

6. The CITY expects that all attorneys will have a library, be it in book or electronic form. Consequently, the CITY will not pay for electronic legal research, such as LexisNexis or Westlaw.
7. CITY will not pay for billing or discussion of bills. If CITY has questions about billing or needs additional information on bills, that is not a chargeable event; CONSULTANT should respond without charging CITY for the time required.
8. CITY appreciates when CONSULTANT has researched an issue previously and uses that research on the present case. CITY has retained CONSULTANT because of its past experience. CONSULTANT shall not charge CITY for work it has done and billed another client for in the past.
9. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.
10. CONSULTANT shall submit to CITY an invoice for each monthly payment due. Such invoice shall:
  - A) Reference this Agreement;
  - B) Describe the services performed;
  - C) Show the total amount of the payment due;
  - D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
  - E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in Exhibit "A" may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

11. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.



<b>ACORD</b> <small>TM</small> <b>CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 02/02/2007
<b>PRODUCER</b> Alliance Mgt. & Insurance Services, Corp License # 0737966 P.O. Box 849 San Marcos CA 92079		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>INSURED</b> NORMAN A TRAUB ASSOCIATES 5409 VIA FONTE YORBA LINDA CA 92886-5006		<b>INSURERS AFFORDING COVERAGE</b> INSURER A: FIRST MERCURY INSURANCE COMPANY INSURER B: INSURER C: INSURER D: INSURER E:
		NAIC #

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADDL LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	FMMI010259	04/07/06	04/07/07	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (If a occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ Included GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Included
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STP-TUL-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>OTHER</b> Errors & Omissions	FMMI010259	04/07/06	04/07/07	Each Occurrence \$1,000,000 General Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CITY OF HUNTINGTON BEACH IS LISTED AS AN ADDITIONAL INSURED WITH RESPECT TO THE WORK PERFORMED BY THE NAMED INSURED.

INVESTIGATIONS, CA-

CERTIFICATE HOLDER

CITY OF HUNTINGTON BEACH  
 ATTN: JENNIFER MCGRATH, CITY ATTORNEY  
 2000 MAIN STREET  
 HUNTINGTON BEACH, CA 92648

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

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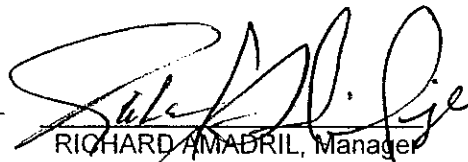


# CITY OF HUNTINGTON BEACH

## Professional Service Contracts Purchasing Certification

1. Date: 2/20/2007
2. Department: City Attorney's
3. Requested by: Michael Vigliotta
4. Name of consultant: Norman A. Traub & Associates
5. Attach the written statement of the specification, conditions and other requirements for the requested services that was provided to solicited consultants in your answer to 11 of this form.  
confidential request-unable to attach.
6. Amount of the contract: \$45,000.00
7. Are sufficient funds available to fund this contract?<sup>1</sup> ☒ Yes ☐ No
8. Is this contract generally described on the list of professional service contracts approved by the City Council<sup>1</sup>? ☒ Yes ☐ No
9. Company number and object code where funds are budgeted: 10015101.69380 ✓
10. Is this contract less than \$50,000? ☒ Yes ☒ No
11. Does this contract fall within \$50,000 and \$100,000? ☐ Yes ☒ No
12. Is this contract over \$100,000? ☐ Yes ☒ No  
(Note: Contracts requiring City Council Approval need to be signed by the Mayor and City Clerk. Make sure the appropriate signature page is attached to contract.)
13. Were formal written proposals requested from at least three available qualified consultants?  
☒ Yes ☐ No
14. Attach list of consultants from whom proposals were requested (including a contact telephone number). ✓
15. Attach proposed scope of work. ✓
16. Attach proposed payment schedule. ✓

  
Department Head Signature

  
RICHARD AMADRIL, Manager  
Purchasing/Central Services

1. If the answer to this question is "No," the contract will require approval from the City Council.

	Received
Katherine J. Edwards, Esq. 2287 Mulholland Highway, #307 Calabasas, CA 92302 Ph. (818) 324-8748 Fax: (818) 223-8655 Katherine@master- ribakoff.com	1/26/07
Norman A. Traub Associates 5409 Via Fonte Yorba Linda, CA 92886 Ph. 714-693-3428 Fax. 714-200-0310	1/29/07
RCS Investigations 446 South Anaheim Hills Rd. #176 Anaheim, CA Ph. (714) 745-6522 Fax (714) 283-2889	1/29/07
Peter Ferguson, Esq. FERGUSON, PRAET & SHERMAN 1631 East 18 <sup>th</sup> Street Santa Ana, CA 92705 Ph. Fax (714) 953-1143	1/30/07